IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1236 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHANTABEN LAKHMANBHAI

Versus

GANUBHAI DUNGARBHAI NAKUM

Appearance:

1. Civil Revision Application No. 1236 of 2002

MR AMAR D MITHANI for Petitioner No. 1

..... for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/12/2002

ORAL JUDGEMENT

#. Rule. Mr.Dharmesh Nanavati, learned advocate, for the respondent, appears and waives service of rule for

the respondent. With the consent of the parties, the matter is taken up for hearing today.

#. The petitioner herein preferred an application before the District Court, Junagadh, being Civil Misc. Application No.2 of 2000, for condonation of delay in filing Regular Appeal, which is filed against the judgment and decree passed by the learned 5th Joint Civil Judge (Senior Division), Junagadh in H.M.P. No.33 of 1994. In the said matter, a decree is passed against the present petitioner and that decree is challenged by way of appeal. However, there is a delay of 235 days in filing the appeal. The reason given by the petitioner for delay is that she was staying with her mother, as, her mother was not keeping good health during the intervening period, and, ultimately she died. Another ground given for condonation of delay is that, her advocate had gone to a foreign country, i.e. America, since considerable time, and, therefore, she was not aware about technicalities and procedure for filing the appeal. Under these circumstances, it was prayed before the District Court that the delay in filing appeal may be condoned. The said application was heard by the learned 2nd Joint District Judge, who by his order dated 26.4.2000 rejected the said application, against which, present revision application is filed.

#. Mr.Mithani, learned advocate, for the petitioner, submitted that the learned Appellate Judge should have condoned the delay in the interest of justice. For that purpose, he has relied upon the judgment of the Apex Court, in the case of Collector, Land Acquisition, Anantnag and another Vs Mst.Katiji and others, reported in AIR 1997 SC 1353. The Apex Court has held in para 3 as under.:

> "The legislature has conferred the power to condone delay by enacting S.5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierachy. And such a liberal

approach is adopted on principle as it is realized that :-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay ? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on

> account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to inform with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

#. Considering the facts and circumstances of the case, in my view, the appellate Court should have condoned the delay, and that, appeal should have been decided on merits. This being a matrimonial matter and considering the fact that the advocate of the petitioner was out of station for a long time, is a sufficient cause for condonation of delay in filing the appeal. Considering the facts and circumstances of the case, delay in filing the appeal deserves to be condoned. Learned advocate for the respondent, however, submitted that, reasonable costs may be awarded to the respondent for allowing the application for condonation of delay in filing appeal. Under these circumstances, the order of the Appellate Court passed in Civil Misc. Application No.2 of 2002 is quashed and set aside and the application for condonation of delay is accordingly allowed. The effect of this order is that the Registry of the District Court shall give appropriate number to the said appeal, and, thereafter, appeal may be decided on merits expeditiously. The petitioner is directed to pay costs of Rs.1000/- (Rupees one thousand only) to the respondent. Such costs to be deposited before the appellate Court within a period of two months from today.

The respondent will be entitled to withdraw the aforesaid amount unconditionally.

#. In view of what is stated above, this revision application is allowed. Rule is made absolute to the extent indicated above. So far as this revision application is concerned, there shall be no order as to costs.

(P.B.Majmudar,J)
(pathan)